IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

-

WRIT PETITION No. 20261 of 1994

Between:

Syndicate Bank, I.R.Cell,

Zonal Office, Somajiguda,

Hyderabad-500 482

Represented by Dy.General Manager

..... PETITIONER

AND

1. Industrial Tribunal, Hyderabad,

rep. by Presiding Officer.

2. R.Babu Prasad, S/o R.Ananda Rao,

Hindu, aged 40 years, Special Asst.

Syndiate Bank, residing at Salipet,

2nd Line, Arundalpet, Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the Records relating to Award dated 20-5-1994 in I.D.No.76/92 on the file of the Industrial Tribunal, Hyderabad, the 1st respondent herein, by issuing a Writ of Certiorari or any other appropriate writ, order or direction and quash the same.

Counsel for the Petitioner: Mrs. B. INDIRA RAM

Counsel for the Respondent No.1: GP FOR LABOUR
Counsel for the Respondent No.2: Mr. B.G. RAVINDRA REDDY

The Court made the following :

ORAL ORDER:

This writ petition is filed by the management-Bank being aggrieved by the Award dated 20-5-1994 made in I.D.No.76 of 1992 on the file of the Industrial Tribunal at Hyderabad.

The 2nd respondent herein while serving as a Clerk of the Syndicate Bank, was suspended from service for certain misconduct. After conducting a detailed enquiry into the matter, he was dismissed from service. Thereafter, an Industrial Dispute was raised and the same was referred to the Tribunal vide Order dated 10-8-1992 of the Ministry of Labour, Government of India passed under Section 10(1)(d)(2A) of the Industrial Disputes Act,1947 (for short 'the Act') for resolving the following issue:

> "Whether the action of the Management of Syndicate Bank, Zonal Office, Vijayawada (now shifted to Hyderabad) in dismissing Sri R. Baba Prasad, Special Assistant, Syndicate Bank, Ongole Branch, w.e.f. 29-6-91 is justified ? If not, to what relief the workman entitled to ?

It was the contention of the respondent-workman before the Tribunal that he was not responsible for the alleged misconduct and has not committed any misconduct or irregularity as alleged by the management. The management placed him under suspension vide charge sheet-cum-suspension order dated 28-11-1989. Later, the

Enquiry Officer conducted the enquiry and submitted his report holding him guilty of the charges. The same is arbitrary and illegal. The petitioner-management filed a detailed counter affidavit before the Tribunal stating that the charge against the workman was not of sanction of loans, but of raising fictitious debits to the loan accounts already in existence. The averment that he was not supplied with relevant papers was not correct. Without making any attempt to participate in the enquiry, the workman cannot say that certain documents were not furnished to him. Really if the workman is interested to defend himself, he could have participated in the enquiry and cross-examined the management's witnesses and then demanded for the documents. The non-payment of expenses to travel to Hyderabad is not a real ground for his not attending the enquiry conducted at Hyderabad. The workman is well aware of the Rule in the Bank that any employee, whether under suspension or otherwise, including his defence representative are eligible for T.A. and D.A. for attending enquiry. In fact, the Enquiry Officer, vide his Notice dated 13-3-1991 had intimated the workman that the enquiry would be held on 27-3-1991. The workman received the said notice, but did not attend the enquiry. Therefore, he cannot complain of violation of principles of natural justice. A detailed enquiry was conducted as per the procedure in vogue and giving opportunity to the workman. The enquiry officer found the workman guilty of the charges and as such, final order was passed dismissing him from service. There is no illegality committed by the Bank. The Tribunal found that the enquiry conducted by the management was valid. Thereafter, the parties were directed to adduce evidence. No oral evidence was adduced by either side, but on behalf of the workman Exs.W1 to W6 were marked and for the management Exs.M1 to M26 were marked. After detailed appreciation of the entire evidence on record, the Tribunal came to the conclusion that the evidence of M.W.1 before the Enquiry Officer was based on the statement of some third persons and one among them was the employee of the Bank itself and the said employee was not examined nor the workman was permitted to cross-examine him. Therefore, though the witness was at the beck and call of the Bank, he was not called to the enquiry and only on the basis of the statement of M.W.1 the workman was held to be guilty of the charges, which is not permissible. The Tribunal appreciated the entire evidence on record as under:

> ".....The witness M.W.1 obtained statements of these two persons, namely, M/s. U.Koteswara Rao and M.Srinivas Rao during the course of his own investigation. The witness M.W.1 relied on these statements to support his version. These two persons were not

examined as witnesses on behalf of the Respondent-Management nor their statements were subjected to any cross-examination. These are the statements obtained by M.W.1 behind the back of the petitioner-workman. It is surprising as to why these two material witnesses were not examined before the Enquiry Officer. It is also on record that one of these two account holders is a staff member. At least, he is not examined in the enquiry. Further, the petitioner has also filed certain documents and one such document is legal notice sent by one of the account holders wherein the said account holders disclaims any of these allegations and further it is stated in the said notice that his signature was obtained by M.W.1 and that what is tried to be made out by M.W.1 is not correct. It is also on record in the counter filed by the respondent-Bank that the said account holder Mr.U.Koteswar Rao had also written a letter dt.29-4-1991 earlier on the same lines. This creates any amount of doubt on the version of the management in support of the charges. Further, a look at the vouchers filed by the respondent-Bank also shows that the signatures are genuine. In any Bank, Cashier pays the amount to the beneficiary only and in token of payment cashier obtains the signature on the back of the voucher. The signatures are there on the vouchers as required as per the Banking Rules. Even if it is assumed that the signatures are not that of the concerned account holder, somebody must have signed at the time of receiving the payment from the cashier. Obviously, the petitioner cannot sign being a staff member, who is well known in the Bank and who can be identified by anybody and the Cashier. If the concerned account holder had not come to the Bank, how the amount was paid and to whom, there is absolutely no evidence on this aspect in the enquiry. The respondent has also not chosen to adduce any evidence in the Court. It is also on record that the Enquiry Officer has not given any finding on this charge pertaining to the account of Mr.U.Koteswar Rao. He just skipped over that an except narrating the statement nothing has been said by him. Surprisingly, the disciplinary authority accepts the finding which is not there. All this shows that there is absolutely no application of mind on the part of the Authority, who passed the removal order. Even otherwise, the evidence given by M.W.1 cannot substantiate the charge alleged against the petitioner. Coming to the next part of the charge pertaining to Mr. Srinivas Rao, it is an admitted case of the respondent that the said account holder had duly signed the vouchers and handed over them to the petitioner due to the pressure exercised by him and that the petitioner managed to get the loan and used it. Here again, the record shows that the vouchers bear the signature of the account holder, on their back side evidencing the payment of cash to him. Mr. Srinivasa Rao is a staff member of the same Branch and it goes without saying that nobody can take the amount except him. There is absolutely no evidence in the statement of M.W.1 on this aspect of the matter. M.W.1 has simply presumed that since Mr.Srinivas Rao has said that he signed on the vouchers due to the pressure of the petitioner, the petitioner would have taken the amount. Therefore, the evidence of M.W.1 has not proved the charge alleged against the petitioner. It is also not known how anybody can pressure Mr.Srinivas Rao and how he can sign the vouchers and leave the matter to the petitioner. There is no proof of this except the self-serving statement of Sri Srinivas Rao. In view of the documentary evidence available, it is difficult to believe the version of M.W.1. The Banking system has got some rules and when payment has to be made on taking the signature of a person, once the signature is there as required in the rules, it can be presumed that the payment is made to the concerned person. It is also not understood how Mr.Srinivas Rao kept quiet when amount was taken by somebody else. There is any amount of doubt in the version of M.W.1. As already stated the material witnesses are not examined. Further, if any loan is to be granted, the concerned Clerk will prepare the voucher and the same will be sanctioned by the Branch Manager and then the

same would be passed on to the Cashier for payment. All those persons cannot just do all this without there being the customer. If they do it, they are also equally guilty. The petitioner is admittedly not the competent authority to sanction the loan. He is a only a special Assistant in the category of Award staff. The findings of the Enquiry Officer in this regard are not correct and are accordingly set aside……"

Further, the Tribunal also examined the decisions rendered by various Courts on the point and came to the conclusion that the dismissal order itself was contrary to the bipartite settlement, even if the disciplinary action was to be taken basing on it. In the circumstances, it goes without saying that the clause in the Bipartite agreement was mandatory and the employer is bound to comply with it. Since the management has not complied with the same, the order of dismissal was not proper. Further, it also noticed the fact that the workman had put in unblemished service of 22 years. Under these circumstances, while exercising its powers under Section 11-A of the Act set aside the dismissal order and held that the workman is entitled to be reinstated with continuity of service and with full back wages and all other attendant benefits.

The main thrust of the learned counsel for the petitioner was that while holding the enquiry as valid, the Tribunal ought not to have appreciated the entire evidence and come to a different conclusion than that of the disciplinary authority and such a course of action is not permissible. I am afraid, I cannot agree with the said submission. The impugned Award is well reasoned one and the entire evidence was well appreciated. I find no reason to interfere with the said Award passed by the Tribunal. The writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

20-12-2004

prk

ASSISTANT REGISTRAR

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SECTION OFFICER

To

1. The Presiding Officer, Industrial Tribunal, Hyderabad,

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